

**PROJECT NO. 38338**

<b>RULEMAKING RELATING TO THE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ACCOUNTABILITY AND</b>	<b>§</b>	
<b>PERFORMANCE OF THE ELECTRIC</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RELIABILITY COUNCIL OF TEXAS</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §§25.361, 25.362 AND 25.363  
AS APPROVED AT THE AUGUST 19, 2010 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §25.361, relating to the Electric Reliability Council of Texas, §25.362, relating to Electric Reliability Council of Texas Governance, and §25.363, relating to Electric Reliability Council of Texas Fees and Other Rates. The proposed amendments will make the Electric Reliability Council of Texas more accountable to the commission and introduce additional controls over the budget and fees of this organization. These rules are competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 38338 is assigned to this proceeding.

Jess Totten, Competitive Markets Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Totten has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be greater accountability and cost control with respect to the Electric Reliability Council of Texas (ERCOT), which plays a critical role in the efficient operation of the electricity grid in most of Texas. There will be no adverse economic effect on small businesses or micro-businesses as a

result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There may be economic costs to persons who are required to comply with the proposed section. These costs implementing management, governance, and budgeting changes by ERCOT, but the rules are also anticipated to require ERCOT to exercise greater scrutiny over its costs and seek and implement operational improvements. Accordingly, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Mr. Totten has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, November 3, 2010. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted

within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 38338. In addition to the comments on the proposed rules and the costs of the rules, if adopted, the commission invites comments on the following question:

The Texas Sunset Commission has recommended a change in the way the ERCOT administrative fee is set, so that the fee would be designed to collect the amount of the approved budget, rather than the amount generated by a fixed fee. Would it be appropriate for the commission to adopt such a change in connection with the adoption of the rules proposed in this Order?

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.151, which grants the commission the authority to adopt and enforce rules relating to the reliability of the regional electric network and accounting for the production and delivery of electricity among market participants, provides that an independent organization is directly responsible and accountable to the commission, provides that the commission has complete authority to oversee and investigate the organization's finances, budget, and operations as necessary to ensure the organization's accountability and to ensure that it adequately performs

its functions and duties, require an independent organization to provide reports and information relating to the independent organization's performance of its functions and relating to the organization's revenues, expenses, and other financial matters. In addition, this section permits the commission to prescribe a system of accounts for an independent organization; conduct audits of an independent organization relating to the performance of its functions or its revenues, expenses, and other financial matters and may require an independent organization to conduct such an audit; inspect an independent organization's facilities, records, and accounts; assess administrative penalties against an independent organization. This section also authorizes the commission to approve and charge a reasonable and competitively neutral rate to cover the independent organization's costs. This section directs the commission to investigate the organization's cost efficiencies, salaries and benefits, and use of debt financing and permits it to require an independent organization to provide any information needed to effectively evaluate the organization's budget and the reasonableness and neutrality of a rate or proposed rate or the effectiveness or efficiency of the organization.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.151.

**§25.361. Electric Reliability Council of Texas (ERCOT).**

- (a) **Applicability.** This section applies to the Electric Reliability Council of Texas (ERCOT). It also applies to transmission service providers (TSPs) and transmission service customers, as defined in §25.5 of this title (relating to Definitions), with respect to interactions with ERCOT. For the purpose of this section and §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance) an ERCOT rule is a protocol, operating guide, market guide, or other procedures that constitutes a statement of general policy and that has an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system in the ERCOT region.
- (b) **FunctionsPurpose.** ERCOT shall perform the functions of an independent organization under the Public Utility Regulatory Act (PURA) §39.151 to ensure access to the transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms; ensure the reliability and adequacy of the regional electrical network; ensure that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information; and ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region. ERCOT shall:~~In addition, ERCOT may, on the introduction of customer choice in the ERCOT power region, acquire generation-related ancillary services on a nondiscriminatory basis on behalf of entities selling electricity at retail in accordance with PURA §35.004(e).~~

~~(e) **Functions.** ERCOT shall operate an integrated electronic transmission information network and carry out the other functions prescribed by this section. ERCOT shall:~~

- (1) administer, on a daily basis, the operational and market functions of the ERCOT system, including acquiring ancillary services, scheduling ~~of~~ resources and loads, and managing transmission congestion~~management~~, as set forth in this title, commission orders, and the ERCOT rules~~protocols~~;
- (2) administer settlement and billing for services provided by ERCOT, including assessing creditworthiness of market participants and establishing and enforcing reasonable security requirements in relation to their responsibilities in ERCOT-operated markets;
- (3) serve as the single point of contact for the initiation of transmission transactions;
- (4) maintain the reliability and security of the ERCOT region's electrical network, including the instantaneous balancing of ERCOT generation and load and monitoring the adequacy of resources to meet demand;
- (5) provide for~~direct the curtailment and redispatch of ERCOT generation and transmission transactions on a~~ non-discriminatory access to the transmission system~~basis~~, consistent with this title, commission orders, and ERCOT rules~~protocols~~;
- (6) accept and supervise the processing of all requests for interconnection to the ERCOT transmission system from owners of new generating facilities;
- (7) coordinate and schedule planned transmission facility outages;
- (8) perform system screening security studies, with the assistance of affected TSPs;

- (9) plan the ERCOT transmission system, in accordance with ~~subsection (f) of this section;~~
- (10) administer procedures for the registration of market participants;
- (11) ~~develop,~~ manage, and operate the customer registration system;
- (12) administer the renewable energy program, unless the commission designates a different person to administer the program;
- (13) monitor generation planned outages;
- (14) disseminate information relating to market operations, market prices, and the availability of services, in accordance with this title, commission orders, and the ERCOT ~~rules~~protocols;
- (15) operate an electronic transmission information network; and  
~~submit an annual report to the commission identifying existing and potential transmission and distribution constraints and system needs within ERCOT, with emphasis on critical transmission projects, alternatives for meeting system needs, and recommendations for meeting system needs, pursuant to PURA §39.155 (relating to Commission Assessment of Market Power); and~~
- (16) perform any additional duties required under this title, commission orders, and the ERCOT ~~rules~~protocols.

(c)(d) **Commercial functions.** ERCOT shall dispatch generation facilities ~~only~~ in accordance with the provisions of this title, commission orders and the ERCOT ~~rules~~protocols. ~~This responsibility includes authority to redispatch generation resources, in accordance with §25.200 of this title (relating to Load Shedding, Curtailments, and Redispatch) and the ERCOT protocols, and to determine and purchase the amount of ancillary services~~

~~required to maintain and ensure the reliability of the network.~~ All commercial functions required to ensure reliability and adequacy of the transmission network are to be conducted in accordance with the ERCOT ~~rules~~ protocols.

~~(d)~~(e) **Liability.** ERCOT shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities.

~~(e)~~(f) **Planning.** ERCOT shall conduct transmission system planning and exercise comprehensive authority over the planning of bulk transmission projects that affect the transfer capability of the ERCOT transmission system. ERCOT shall supervise and coordinate the other planning activities of TSPs.

- (1) ERCOT shall evaluate and make a recommendation to the commission as to the need for any transmission facility over which it has comprehensive transmission planning authority.
- (2) A TSP shall coordinate its transmission planning efforts with those of other TSPs, insofar as its transmission plans affect other TSPs.
- (3) ERCOT shall submit to the commission any revisions or additions to the planning guidelines and procedures prior to adoption. ERCOT may seek input from the

commission as to the content and implementation of its guidelines and procedures as it deems necessary.

~~(f)~~**(g)** **Information and coordination.** Transmission service providers and transmission service customers shall provide such information as may be required by ERCOT to carry out the functions prescribed by this ~~title, commission orders, section~~ and the ERCOT ~~rules protocols~~. ERCOT shall maintain the confidentiality of competitively sensitive information and other protected information, as specified in §25.362 of this title. Providers of transmission and ancillary services shall also maintain the confidentiality of competitively sensitive information entrusted to them by ERCOT or a transmission service customer.

~~(g)~~**(h)** **Interconnection standards.** ~~In performing its functions related to the reliability and security of the ERCOT electrical network,~~ ERCOT may prescribe reliability and security standards for the interconnection of generating facilities that use the ERCOT transmission network. Such standards shall not adversely affect or impede manufacturing or other internal process operations associated with such generating facilities, except to the minimum extent necessary to assure reliability of the ERCOT transmission network.

~~(h)~~**(i)** **ERCOT administrative fee.** ERCOT shall charge an administrative fee, ~~and for transmission service in accordance with ERCOT protocols. Changes in the fee or application of new~~ fees ~~it charges~~ are subject to commission approval, ~~in accordance with this title.~~

(i)⊕ **Reports.** Each TSP and transmission service customer in the ERCOT region shall on an annual basis provide to ERCOT historical information concerning peak loads and resources connected to the TSP's system. ~~ERCOT shall periodically file with the commission reports concerning its governance, operations and budget, the reliability region of the ERCOT electrical network, and ERCOT's transmission planning efforts, including a list of any transmission projects that it recommends.~~

(j)⊕ **Anti-trust laws.** The existence of ERCOT is not intended to affect the application of any state or federal anti-trust laws.

(k)⊕ **Decertification.** ERCOT shall be subject to decertification as an independent organization in accordance with §25.364 of this title (relating to Decertification of an Independent Organization).

**§25.362. Electric Reliability Council of Texas (ERCOT) Governance.**

- (a) **Purpose.** This section provides standards for the ~~governance~~~~operation~~ of an independent organization within the ERCOT region.
- (b) (No change.)
- (c) **Adoption of rules by ERCOT and commission review.** ERCOT shall adopt and comply with procedures concerning the adoption and revision of ~~protocols and procedures~~ERCOT rules ~~that constitute statements of general policy and that have an impact on the governance of the organization or on reliability, settlement, customer registration, or access to the transmission system.~~
- (1) The procedures shall provide for advance notice to interested persons, an opportunity to file written comments or participate in public discussions, and, in the case of new ~~ERCOT rules~~~~protocols~~ or revisions to ~~ERCOT rules~~~~protocols~~, an evaluation by ERCOT of the costs and benefits to the organization and the operation of electricity markets.
- (2) ERCOT staff, the independent market monitor, and the commission's reliability monitor may comment on any proposed change in ERCOT rules that affects the operation and competitiveness of markets operated by ERCOT or reliability of the electric network in ERCOT. [The commission shall process requests for review of ERCOT protocols, procedures, and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct).]

- (3) If the findings of a commission-mandated audit of ERCOT operations or governance indicate the need for a change in operating practices or procedures or governance rules, ERCOT shall develop and submit to the commission a plan for implementing the changes. ERCOT shall implement the plan, as approved by the commission.
- (4) The commission may review a provision of ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule on the application of an interested person, including commission staff and the Office of Public Utility Counsel.
- (5) If the commission concludes that ERCOT's articles of incorporation or by-laws, or a new or amended ERCOT rule is not consistent with law or not conducive to the efficient and effective management of the organization, reliable operation of the electrical network, or efficient operation of energy markets, it may order ERCOT to modify any of these documents. If the commission orders a modification of any of these documents, it may establish a date by which such modifications must be completed.
- (6) The commission shall process requests for review of ERCOT rules and decisions in accordance with §22.251 of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). A request for review under this subsection is not subject to the alternative dispute resolution requirements in § 22.251(c) of this title, and the commission may, for good cause, waive the requirement that a complaint be filed within the time prescribed in § 22.251(d) of this title.

- (d) **Access to meetings.** ERCOT shall adopt and comply with procedures for providing access to its meetings to market participants and the general public. These procedures

shall include provisions on advance notice of the time, place, and topics to be discussed during open and closed portions of the meetings, and making and retaining a record of the meetings. Records of meetings of the governing board ~~of directors~~ shall be retained permanently, and ERCOT shall establish reasonable retention periods, but not less than five years, for records of other meetings.

(e) **Access to information.** This subsection governs access to information held by ERCOT ~~and access to information held by the commission that it receives from ERCOT.~~

(1) ERCOT shall adopt and comply with procedures that allow persons to request and obtain access to records that ERCOT has or has access to relating to the governance and budget of the organization, market operation, reliability, settlement, customer registration, and access to the transmission system. ERCOT shall make these procedures publicly available. Information that is available for public disclosure pursuant to ERCOT procedures shall normally be provided within ten business days of the receipt of a request for the information. If a response requires more than ten business days, ERCOT will notify the requester of the expected delay and the anticipated date that the documents may be available. ERCOT's procedures regarding access to records shall be consistent with this title and commission orders~~section.~~

(A) Information submitted to or collected by ERCOT pursuant to requirements of ERCOT rules~~the protocols or operating guides~~ shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules~~the Protocols~~ except as otherwise provided in this subsection.

- (B) On its own motion or the petition of an affected party, including commission staff, the commission may, after providing reasonable notice to affected parties and an opportunity to be heard, amend the definition of “Protected Information” or the designation of “Items Not Considered Protected Information” under the ERCOT ~~rules~~Protocols. In considering such an amendment, the commission may review the specific information under consideration or a general description of such information.
- (C) ~~The procedures adopted by~~ ERCOT ~~under this subsection~~ shall ~~include provisions for~~ promptly ~~respond~~responding to a request from the commission, ~~the~~ commission Executive Director or the Executive Director’s designee~~staff~~ for information that ERCOT collects, creates or maintains in order to provide the commission access to information that the commission, the commission Executive Director or the Executive Director’s designee ~~or commission staff determines is necessary to assess market power and the development and operation of competitive wholesale and retail markets; to evaluate possible violations of laws, rules, protocols, or codes of conduct; or~~ to carry out the commission's responsibilities for oversight of ERCOT and the wholesale and retail markets.
- (2) Commission employees, consultants, agents, and attorneys who have access to Protected Information pursuant to this section shall not disclose such information except as provided in ~~this subsection and in accordance with the provisions of~~ the Texas Public Information Act (TPIA).

- ~~(A) If the commission receives from a member of the Texas Legislature a request for information that the commission has or has access to that is designated as "Protected Information" under the ERCOT Protocols, the commission shall provide the information to the requestor pursuant to the provisions of Texas Government Code Annotated §552.008. If permitted by the requesting member of the Texas Legislature the commission shall notify ERCOT, and, if applicable, the entity that provided the information to ERCOT, of the existence of the request, the identity of the requestor, and the substance of the request.~~
- ~~(B) If the commission receives a request for information that the commission has or has access to that has been designated as Protected Information under the Protocols the commission shall make a good faith effort to provide notice of the request to the affected market participant and ERCOT within three business days of receipt of the request. If the third-party provider of the information objects to the release of the information, the commission shall offer to facilitate an informal resolution between the requestor and the third party. If informal resolution of an information request is not possible, the commission will process the request in accordance with the TPIA.~~
- ~~(C) In the absence of a request for information, if the commission staff seeks to release information that the commission has or has access to that has been designated as Protected Information under the Protocols, the commission may determine the validity of the asserted claim of~~

~~confidentiality through a contested case proceeding. In a contested case proceeding conducted by the commission pursuant to this subsection, the staff, the entity that provided the information to the commission, and ERCOT will have an opportunity to present information or comment to the commission on whether the information is subject to protection from disclosure under the TPIA.~~

~~(D) In connection with any challenge to the confidentiality of information under subparagraph (C) of this paragraph, any person who asserts a claim of confidentiality with respect to the information must, at a minimum, state in writing the specific reasons why the information is subject to protection from public disclosure and provide legal authority in support of such assertion.~~

~~(E) Except as otherwise provided in subparagraph (A) of this paragraph, if either the commission or the attorney general determines that the disclosure of information designated as Protected Information under the ERCOT Protocols is appropriate, the commission shall provide notice to the entity that provided the information and to ERCOT at least three business days prior to the disclosure of the Protected Information (or, in the case of a valid and enforceable order of a state or federal court of competent jurisdiction specifically requiring disclosure of Protected Information earlier than within three business days, prior to such disclosure).~~

(f) (No change.)

(g) **Qualifications ~~for~~ and selection of ~~membership on~~ members of the governing board.**

ERCOT shall establish and implement criteria for an individual to serve as a member of its governing board, procedures to determine whether an individual meets these criteria, and procedures for removal of an individual from service if the individual ceases to meet the criteria.

(1) The qualification criteria shall include:

(A) - (B) (No change.)

(C) Standards of good standing that an organization must meet, in order for a representative of the organization to serve as a member of the governing board; ~~and~~

(D) Standards of good standing that an individual must meet, in order for the individual to serve as a member of the governing board; ~~and~~

(E) The disqualification of any person to serve as a member of the governing board as a director that is not selected by a market sector under ERCOT's rules of governance if the person is employed or has within one year been employed by an entity in the electric sector that is eligible for membership in ERCOT in a market sector that has a representative on the governing board, other than a consumer sector.

(2) The procedures for removal of a member from service on the governing board shall include:

(A) (No change.)

(B) Procedures for the removal of an individual from the governing board if the individual or the organization that the individual represents no longer

meets the criteria adopted under paragraph (1) of this subsection or violates a policy adopted under this section.

- (3) The procedures adopted under paragraph (2) of this subsection shall:
- (A) Permit any interested party to present information that relates to whether an individual or organization meets the criteria specified in paragraph (1) of this subsection or has violated a policy adopted under this section; and
- (B) Specify how decisions concerning the qualification of an individual or whether an individual has violated a policy will be made.
- (4) A decision concerning an individual or organization's qualification or an individual's removal from the governing board is subject to review by the commission.
- (5) ERCOT shall notify the commissioners when a vacancy occurs for a member of the governing board who is not selected by a market sector under ERCOT's rules of governance. ERCOT shall provide information to the commissioners concerning the process for selecting a new member, the candidates who have been identified and their qualifications, any recommendation that will be made to the governing board, and any other information requested by a commissioner. The selection of a member of the governing board who is not selected by a market sector is subject to approval by the commission. A person who is selected may not serve as a member of the governing board until the commission approves the selection.
- (6) A member of the governing board of ERCOT appointed after the effective date of this paragraph who has served as a director that is not selected by a market sector

under ERCOT's rules of governance may not represent a market participant before the governing board of ERCOT, the ERCOT technical advisory committee, or any of its subcommittees or working groups, for a period of two years after the person ceases to serve as a director of ERCOT.

(h) **Executive officers and managers.** The appointment of the chief executive officer, chief operating officer, and vice presidents of ERCOT is subject to commission approval.

(i)(h) **Required reports and other information.** ERCOT shall file with the commission the reports and provide the information required by this subsection.

- (1) **Annual report.** ~~Beginning with the 2002 calendar year,~~ ERCOT shall file an annual report and operations report with the commission, not later than 120 days after the end of the year. The annual report and operations report shall include:
- (A) A summary of the findings of an~~An~~ independent audit of ERCOT's financial statements for the report year;
  - (B) A schedule comparing actual revenues and costs to budgeted revenues and costs for the report year, ~~and~~ a schedule showing the variance between actual and budgeted revenues and costs, and a schedule showing the assets and liabilities (including level and types of debt);
  - (C) A summary of the findings of an~~An~~ independent audit of ERCOT's market operation for the report year;
  - (D) The annual board-approved budget; ~~and~~

- (E) A summary of key market operations statistics, including prices and quantities of energy and capacity purchased in the markets operated by ERCOT; ~~Any other information the commission may deem necessary.~~
  - (F) A summary of key reliability statistics;
  - (G) A summary of transmission planning and generation interconnection activities and the most recent report on capacity, demand and reserves; and
  - (H) Any other information the commission may deem necessary.
- (2) **Resources report.** ERCOT shall submit a report to the commission no later than October 1 of each even-numbered year, identifying existing and potential transmission constraints and the need for additional transmission, generation, or demand response resources within the ERCOT region. The report shall include projections of changes in demand, the capability of generation, energy storage, and demand response resources, projected reserve margins alternatives for meeting system needs, and recommendations for meeting system needs.
- ~~(3)~~(2) **Quarterly reports.** ERCOT shall file quarterly reports no later than 45 days after the end of each quarter, which shall include:
- (A) A summary of any material findings of any~~AA~~ internal audit reports that were produced during the reporting quarter;
  - (B) A report on performance measures, as prescribed by the commission;
  - (C) By account item as established in the fee-filing package prescribed by the commission under §22.252 of this title (relating to Procedures for Approval of ERCOT Fees and Rates) a report of:

- (i) ERCOT fees and other rates, funds allocated, funds encumbered, and funds expended;
- (ii) An explanation for expenditures deviating from the original funding allocation for the particular account item;
- (iii) For the report covering the fourth quarter of ERCOT's fiscal year, a detailed explanation of how unexpended funds will be expended in the subsequent year; and

(D) Any other information the commission may deem necessary.

(4)(3) **Emergency reports.** If ERCOT management becomes aware of any event or situation that could reasonably be anticipated to adversely affect the reliability of the regional electric network; the operation or competitiveness of the accounting procedures applicable to ERCOT or the ERCOT market; ERCOT's performance of activities related to the customer registration function; or the public's confidence in the ERCOT market or in ERCOT's performance of its duties, ERCOT management shall immediately notify the Executive Director of the commission, or the Executive Director's designee, by telephone. Additionally, ERCOT shall file a written report of the facts involved by the end of the following business day after becoming aware of such event or situation, unless the Executive Director specifies, in writing, that the report may be delayed. The Executive Director may not authorize a delay of more than 30 days for filing the required written report. For good cause, the commission may grant further delays in filing the required report. If it determines that additional reports are necessary, the commission may establish a schedule for the filing of additional reports after

the initial written report by ERCOT. As a part of any additional written report, ERCOT may be required to fully explain the facts and to disclose any actions it has taken, or will take, in order to prevent a recurrence of the events that led to the need for filing an emergency report. ~~If ERCOT contends that any of the information contained in an emergency report is “Protected Information” under the ERCOT Protocols, or is otherwise subject to protection from disclosure under the TPIA, the report will be subject to the requirements of subsection (e) of this section.~~

~~(j)(4)~~ **Compliance with rules or orders.** ERCOT shall inform the commission with as much advance notice as is practical if ERCOT realizes that it will not be able to comply with PURA, ~~the commission's substantive rules~~ any provision of this title, or a commission order. If ERCOT fails to comply with PURA, ~~the commission's substantive rules~~ any provision of this title, or a commission order, the commission may, after notice and opportunity for hearing, adopt the measures specified in this subsection or such other measures as it determines are appropriate.

- (1) The commission may require ERCOT to submit, for commission approval, a proposal that details the actions ERCOT will undertake to remedy the non-compliance.
- (2) The commission may require ERCOT to begin submitting reports, in a form and at a frequency determined by the commission, that demonstrate ERCOT's current performance in the areas of non-compliance.
- (3) The commission may require ERCOT to undergo an audit performed by an appropriate independent third party.

- (4) The commission may assess administrative penalties under PURA Chapter 15, Subchapter B.
- (5) The commission may suspend or revoke ERCOT's certification under PURA §39.151(c) or deny a request for change in the terms associated with such certification.
- ~~(6) The imposition of one penalty under this section does not preclude the imposition of other penalties as appropriate for the instance of non-compliance or related instances of non-compliance.~~
- ~~(7) In assessing penalties, the commission shall consider the following factors:~~
- ~~(A) Any prior history of non-compliance;~~
  - ~~(B) Any efforts to comply with and to enforce the commission's rules;~~
  - ~~(C) The nature and degree of economic benefit or harm to any market participant or electric customer;~~
  - ~~(D) The damages or potential damages resulting from the instance of non-compliance or related instances of non-compliance;~~
  - ~~(E) The likelihood that the penalty will deter future non-compliance; and~~
  - ~~(F) Such other factors deemed appropriate and material to the particular circumstances of the instance of non-compliance or related instances of non-compliance.~~
- ~~(8) The commission may initiate a compliance proceeding or other enforcement proceeding upon its own initiative or after a complaint has been filed with the commission that alleges that the ERCOT has failed to comply with PURA, the commission's substantive rules, or a commission order.~~

~~(6)(9)~~ Nothing in this section shall preclude any form of civil relief that may be available under federal or state law.

~~(j) **Priority of commission rules.** This section supersedes any protocols or procedures adopted by ERCOT that conflict with the provisions of this section. The adoption of this section does not affect the validity of any rule or procedure adopted or any action taken by ERCOT prior to the adoption of this section.~~

(k) **Long-term operations plan.** Annually, by ~~December~~October 31st, ERCOT shall file with the commission a long-term operations plan. The commission may initiate a review of the plan, at its discretion. At a minimum, the long-term operations plan shall provide the following information:

- (1) A description of ERCOT's roles and responsibilities within the electric market in Texas, including system reliability, operation of energy and capacity market and managing transmission congestion settlement of the wholesale market, transmission planning and interconnection of new generating plants,~~centralized control and power scheduling, centralized commercial functions~~ and a description of how ERCOT's roles and responsibilities relate to the roles and responsibilities of the transmission and distribution utilities and retail electric providers and to the North American Electric Reliability Corporation and Texas Reliability Entity;
- (2) (No change.)
- (3) A description of major capital projects completed in the current budget year and those expected to be completed in the next budget year, including an explanation

of why each project is needed to assist ERCOT in meeting its responsibilities or the benefits it would provide to market participants or consumers;

(4)-(5) (No change.)

(6) An evaluation of ERCOT's performance in meeting its responsibilities and system expectations, as set forth in PURA and this title~~the commission rules~~, during the current budget year; and

(7) (No change.)

(1) **Strategic plan.** Annually, by December 31st, ERCOT shall file with the commission a strategic plan. The plan shall include a statement of the mission and vision of the organization, a summary of the industry environment in which it operates, a description of the major challenges it faces, and the key strategies it intends to employ to perform its functions and meet its challenges. The commission may initiate a review of the plan, at its discretion.

**§25.363. ERCOT Budget and Fees ~~and Other Rates~~.**

- (a) **Scope.** This section applies to the budget and all fees and rates levied or charged by the Electric Reliability Council of Texas (ERCOT) in its role as an independent organization under the Public Utility Regulatory Act (PURA) §39.151. ~~Charges for wholesale market services acquired by ERCOT in accordance with its protocols are not governed by this section, but may be revised in accordance with §25.362 of this title (relating to Electric Reliability Council of Texas (ERCOT) Governance).~~
- (1) (No change.)
  - (2) ERCOT shall not implement ~~must seek and obtain commission approval of~~ any new or modified budget, rate or fee ~~without commission approval prior to implementing the new or modified rate or fee.~~
  - (3) ERCOT shall not incur expenses or capital outlays in any year that exceed the amounts approved by the commission, except in the case of an emergency that impairs its ability to conduct its functions.
  - (4) ERCOT shall not incur debt or defer principal repayments of debt without commission approval. ERCOT shall seek approval of any loan or agreement to provide a line of credit from a bank or other institution, the issuance of bonds or notes, any arrangements that would permit it to issue bonds or permit the issuance of bonds on its behalf at a later date, and any draw on a line of credit. This paragraph does not require approval of a contract to lease equipment or other property used in normal operations.
  - (5) ERCOT shall not hire employees, either by direct hiring or contract employment, in excess of any staffing limit prescribed by the commission.

- (b) **System of accounts and reporting.** For the purpose of accounting and reporting to the commission, ERCOT shall maintain its books and records in accordance with Generally Accepted Accounting Principles. ERCOT shall establish a standard chart of accounts and employ it consistently from year to year. The standard chart of accounts shall be used for the purpose of reporting to the commission and shall be consistent with the fee-filing application approved by the commission and the long-term operations plan. The accounts shall show all revenues resulting from the various fees charged by ERCOT and reflect all expenses in a manner that allows the commission to determine the sources of the costs incurred for each major activity conducted by ERCOT~~for which a separate fee is charged~~. ERCOT may not change its chart of accounts to be any less detailed than that required in the fee-filing package without prior commission approval.
- (c) **Allowable expenses**~~for fees and rates~~. Expensed and capital outlays in the budget~~Fees and rates~~ shall be based upon ERCOT's expected cost of performing its required functions as described in PURA §39.151(a) and this title. ~~To determine the reasonable cost of performing its functions, ERCOT shall use a historical test year, except that ERCOT may use a future test year if ERCOT demonstrates that the scope of its activities and functions has been expanded by the commission or the market participants, resulting in higher future costs.~~To determine whether~~if~~ the costs are reasonable and necessary, the commission may consider the budget justification provided by ERCOT, ~~the~~shall review ~~ERCOT's costs for consistency compared to~~ ERCOT long-term operations plan, ~~to~~ costs incurred by market participants and other independent system operators for similar

activities, costs incurred in prior years, capital project identified in the budget, and to any other information and data considered appropriate by the commission.

(1) Only those expenses that are reasonable and necessary to carry out the functions described in PURA §39.151 and this title, shall be included in allowable expenses.

(2)-(3) (No change.)

(d) Commission review and action. The annual budget is subject to review by the commission. ERCOT shall file with the commission its board-approved budget, budget strategies, and staffing needs, with a justification for all expenses, capital outlays, additional debt, and staffing requirements. The budget shall be filed not later than 90 days prior to the date that the budget is expected to be implemented.

(1) The budget shall include categories of expenses, capital outlays, additional debt, and staffing needs in at least the following level of detail:

(A) Transmission system operation, including planning, scheduling, forecasting, and other transmission-related functions;

(B) Retail market operations, including registration and switching of retail customers, load profile administration, meter data management, and related activities;

(C) Operation and settlement of wholesale markets, including registering market participants, accepting bids and determining prices, settlement and billing, credit management, operating a market for congestion revenue rights, and related activities;

- (D) Managing renewable energy credit trading, including registering and accrediting facilities, determining credit obligations, issuing and retiring credits, reporting, and related activities;
  - (E) Customer care, including training and other customer-related activities;
  - (F) Information technology activities; and
  - (G) Support and management functions, including executive management, strategic planning, administrative support, legal, finance, audit, human resources, facilities management, project management, risk management, and related activities.
- (2) Expenses, capital outlays, and staffing needs shall be directly assigned to the categories listed in paragraph (1) of this subsection, to the extent that it is feasible to do so. Allocations or estimates may be used, to the extent that it is not feasible to directly assign expenses, capital outlays, and staffing needs.
- (3) The commission may approve, reject or modify the budget, budget strategies, and staffing needs.
- (4) The commission may approve the recovery of the amount of an approved budget through a fixed fee or fees or through a variable fee that is designed to recover the approved budget amount.
- (5) The commission may adopt performance measures to assess ERCOT's fiscal and operating performance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 23rd DAY OF AUGUST 2010 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**

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